

Minutes of Land Use, Parks and Environment Committee
Tuesday, August 19, 2008

Chair Ruf called the meeting to order at 8:30 a.m. and led the Committee in the Pledge of Allegiance.

Committee Present: Supervisors Fritz Ruf (Chair), Janel Brandtjen, James Jeskewitz, Walter Kolb, and Gilbert Yerke. **Absent:** Supervisors Ted Rolfs and Rob Hutton.

Also Present: Chief of Staff Mark Mader, Legislative Associate Karen Phillips, Parks System Manager Duane Grimm, Senior Land Use Specialist Amy Barrows, Senior Planner Jason Fruth, Senior Buyer Diane Knoll, Risk/Purchasing Manager Laura Stauffer, Corporation Counsel Tom Farley, Senior Financial Analyst Bill Duckwitz and Citizens Rodell Singert, Jolene Cecil and Joan M. Beres.

Discuss and Consider Bid for the Fox River Trail Railroad Salvage

Farley explained background details of this bid. This particular proposal will result in money being paid to the County. The bidder will salvage the steel. Though these types of bids are usually reviewed by the Public Works Committee, the area involved in the particular bid is located within a parkway, thus it is coming before the LUPE Committee. Under the law, if the bidder is the lowest (or the highest, depending on the context), and is a responsible contractor, they are automatically entitled to the project. The function of the Committee is to say everything has been complied with and would proceed to approve the contract. Today, the committee is being asked to reject all of the bids as being non-responsive. The role of the Committee in rejecting all of the bids is to determine that it is not in the best interest of the County to award this contract. An award to any of the bidders would be placing a particular bidder in a more advantageous position than the other proposals. None of the bidders proposed properly. It would be inappropriate at this time to award the bids; the bid process will need to be reopened.

Ruf inquired whether this type of situation happens very often. Farley stated this is a very rare occurrence, maybe once every year or two. The nature of this bid is what makes it different. The bidders should have asked more questions for clarifications.

Grimm provided background on the rail line, formerly an old rail corridor from Waukesha to Brookfield that belonged to the Soo Line/Milwaukee Road. Waukesha County purchased it from the State in October of 2000. There are no road crossing (ties were previously removed) , and only one trestle bridge being considered in this bid. The intent of this bid was to obtain services from an experienced and qualified firm to remove and salvage approximately 5187 feet of railroad track. The materials including the signal crossings, electrical components and the wood ties are to be removed. The remaining rock ballast is to be graded and made into a drivable surface for maintenance and clean up (not a walking trail for public use).

Kolb arrived at 8:41 a.m.

Grimm stated that on Tuesday, July 15, a pre-bid meeting was held at the site. He and Diane Knoll were present to answer questions. Ten vendors attended and their questions were answered. They discussed the need for the bid and performance bond and the requirement of sending the ties to a cogeneration facility. Grimm referred to the vendors listed on the handout that he distributed. Two of the vendors were at the pre-bid meeting; three submitted bids without talking to anyone from Waukesha County about it.

Grimm further explained that due to the unresponsiveness of one or two components in each of the vendor's bid proposals, they are not looking to accept any of the bids. He reviewed the list of the five vendors:

- **Champion Environmental:** Failure to comply with specification #10; recycling of ties at a cogeneration facility. Ties would be disposed of in a landfill.

- Fischer Construction: Failure to comply with specification #10; recycling of ties at a cogeneration facility.

Kolb asked why the specification requiring recycling of the ties was required. What is the benefit for the County besides being politically responsible? Grimm stated that because of the sustainability initiative within their department, efforts would be made to find a use for the ties. Kolb asked if it costs more money to recycle rather than dispose of in a landfill. Why was it written that way?

Ruf requested that Grimm be allowed to finish his presentation; further questions should be held until that point.

- L&K Enterprises: Failure to comply with specifications #17 & #18; submit a bid bond and performance payment bond with the bid form
- Terry's Post Framing: Failure to submit the revised pricing document with the bid and failure to comply with specifications #17 & #18; submit a bid bond and performance payment bond with the bid form
- Tyler Company: Failure to comply with specification #10; recycling of ties at a cogeneration facility. Ties would be disposed of in a landfill.

Grimm concluded by again stating their recommendation of rejecting all of the bids.

Jeskewitz asked what the cogeneration facility does with the ties. Grimm stated the ties are ground up and used to generate electricity.

Kolb stated that the point is clear; sometimes government adds things that cost more just to be politically correct. Were some of these bids not rejected because of the cogeneration facility requirement and that the County required something that would cost more? Kolb questioned what the cost difference would be between the landfill and the cogeneration facility.

Grimm stated he did not know the cost, but the vendors were given an opportunity to have this discussion at the pre-bid meeting. The asked about it and accepted the requirement of sending the ties to the cogeneration facility. There are two cogeneration facilities in the State, the nearest being in Lacrosse. At that time no one expressed that it would cost too much.

Farley suggested that before the re-bid is opened, the Committee might want to discuss the cost effectiveness and benefits of recycling as opposed to putting the ties into the landfill. He explained that once a bidder accepts the responsibility of making the bid, the requirements must be complied with or it would be unfair. Farley added that the sustainability issue was a factor in the recycling requirement.

Kolb stated that he understands and agrees with that, but his complaint is that it seems the requirement was put in without the knowledge of whether it would cost more or not. Kolb stated he would like to see a cost comparison of a landfill versus the cogeneration facility. Grimm stated that he would research the cost comparisons.

Stauffer and Knoll explained that it was understood that vendors would be paid by the cogeneration facility for the ties, where the vendor would pay to have them go to the landfill. The best bid actually complied with taking the ties to the cogeneration facility, but did not include the bid bond.

The bid issues continued to be discussed at length.

In summary, Ruf clarified that the issue today is to look at whether the vendors did comply or did not

comply, not to determine what is appropriate or inappropriate. Clearly, they did not comply with the bid requirements.

MOTION: Yerke moved, second by Jeskewitz, to recommend that Waukesha County reject the five bid proposals for the Fox River Trail Railroad Salvage Project, based upon the fact that each one had a non-responsive element. Motion carried 5-0.

Discuss and Consider Ordinance 163-O-25: Amend The Zoning District Map Of The Town Of Delafield Zoning Ordinance By Conditionally Rezoning Certain Lands Located In Part Of The SE ¼ And NE ¼ Of Section 27, T7N, R18E, Town Of Delafield, Waukesha County, Wisconsin, From The A-1 Agricultural District To The A-3 Suburban Home District (ZT-1676)

Fruth explained the location of the property using an aerial map. He reviewed the proposal to put the 17.9 acres, via a Certified Survey Map, into two parcels. The westerly acreage, which is generally wooded, would be a five-acre parcel. The easterly acreage would be approximately 13 acres. The applicant submitted a conceptual layout for possible division of the 13-acre parcel in the future, for a total of not more than five parcels. Fruth explained the rezoning of this site is compliant with both the County Development Plan and the Town's Land Use Plan.

Fruth added that one sticking point of this proposal is the southern property is one of the six properties in the County where a challenge was submitted relative to the proposed FEMA floodplain mapping. When the appeal was forwarded by his office, the floodplain came down 8 feet based on their appeal, which benefited the applicant. He has since hired a company to do a detailed study that might result in the floodplain coming down even further.

Further discussion ensued and Fruth provided more details in answering the numerous questions raised by Yerke and Kolb.

MOTION: Kolb moved, second by Jeskewitz to approve Ordinance 163-O-025. Motion carried 5-0.

Discuss and Consider Ordinance 163-O-026: Amend The District Zoning Map Of The Waukesha County Shoreland And Floodland Protection Ordinance And The Waukesha County Zoning Code, For The Town Of Vernon By Conditionally Rezoning Certain Lands Located In Part Of The NE ¼ Of Section 10, T5N, R19E, Town Of Vernon, Waukesha County, Wisconsin, From The A-5 Mini-Farm District To The B-3 General Business District (SCZ-1674)

Fruth explained the location of this 3-acre parcel, which is excess acreage associated with the adjacent National Golf Center Driving Range. The owner is proposing to sell the property for development of a John Deere dealership. The petitioner currently owns the Proven Power dealership in the Town of Oconomowoc, and they have indicated this would be a similar operation. The business operation would include the sale and repair of outdoor power equipment and a retail business center for related outdoor equipment supplies.

Singert voiced his support for this rezone, as the business would be a welcome addition to the Town of Vernon. He encouraged the Committee to vote in support of this ordinance.

MOTION: Jeskewitz moved, second by Kolb, to approve Ordinance 163-O-026. Motion carried: 5-0.

Discuss and Consider Resolution 163-R-001: Amend The Regional Water Quality Management Plan For The Brookfield Elm Grove Sanitary Sewer Service Area Waukesha County, Wisconsin

Fruth explained this resolution transfers an approximately 30 acre -parcel currently in the City of Waukesha sewer services area to the Brookfield-Elm Grove sewer service area. Fruth stated the reason is

that it was not cost-effective for the City of Waukesha to provide service to this property, and the City does not have long term plans to extend service to the parcel. The parcel can be more readily served through the Town of Brookfield.

Yerke asked if there is any annexation or transfer of ownership involved. Fruth stated that is not part of part of the request and he is not aware of anything regarding annexation. It is basically a matter of one community having existing lines closer than the other. Ruf added that it is not unheard of that one sanitary sewer district will provide service to an adjoining community without annexing a property, citing specific examples. It operates as a contiguous sanitary sewer system and they contract with the other municipality to provide that service.

MOTION: Kolb moved, second by Jeskewitz to approve Resolution 163-R-001. Motion carried: 5-0.

Presentation of the Floodplain Amendment Process

Ruf prefaced this presentation by clarifying that this is only an information presentation of the process that will be followed to change the floodplain ordinance; the Committee is not being asked to act on anything at this time.

Mader stated this item was agendaized to precede the upcoming presentation of the ordinance regarding the actual Floodplain Amendments to provide background information for understanding the Floodplain Amendment Process.

Fruth provided an update of the work done the Floodplain Amendment Process to this point. He stated it has been an ongoing process since about February 2007, when the draft maps were released. Fruth explained the end of the process is near, and the County is responsible to bring the ordinance into compliance and incorporate the new mapping.

Barrow explained the responsibility of the Waukesha County Department of Parks and Land Use Planning and Zoning Division in administering three different ordinances:

- The Waukesha County Zoning Code
- The Shoreland and Floodland Subdivision Control Ordinance
- The Waukesha County Shoreland and Floodland Protection Ordinance, which is the ordinance being proposed for amendments. Barrows explained that only Floodplain amendments are being done to the ordinance at this time. She explained the ordinance and the areas it covers.

Barrows reviewed the specific Wisconsin State Statutes and Wisconsin Administrative Codes that provide the minimum standards that must be met by the County, as well as compliance with FEMA. She explained the purpose and intent of the ordinance and reviewed the specifics which it encompasses.

Barrows reviewed maps and photographs of some of the recent flooding events in Waukesha County. Cecil, a Venice Beach Drive area resident in the Town of Summit, spoke of her recent flooding experience.

Barrows explained why the floodplain amendments are proposed. They are being done as a result of FEMA's efforts to modernize their maps. She stated that Waukesha County staff was involved with FEMA in identifying specific areas that needed detailed studies; others had approximate studies done, all in an effort to make the new maps more accurate. FEMA will be adopting the new maps on November 19, 2008. If Waukesha County wants to ordain those maps and use them for regulatory purposes and maintain eligibility in the National Flood Insurance Program (NFIP), we have to amend our ordinance and make changes to be as restrictive as FEMA and NR 116 (Wis. Admin. Code). Barrows stated that most of the changes are very technical without much impact to the individual. However, some residents will now

be located in a floodplain or floodway, and that will impact people significantly. Barrows stated she has learned that most local insurance companies will not provide flood insurance because it is too costly for the provider to maintain, which is why it is integral for communities to be compliant with the NFIP standards. If not compliant, eligibility for the program will be lost, as well as eligibility for Federal Disaster Assistance and any mitigation grants. Barrows continued to explain the details of new regulations to comply with NFIP requirements.

Fruth explained the draft floodplain maps were received in February 2007, and a public hearing was held shortly after. Subsequently, notices were published in the newspaper process to let people know there was an appeals process or protest possibility available within a 90-day period. The 90-day appeals period closed in July 2007; afterwards the DNR and FEMA responded, either favorable or unfavorably. Fruth stated the appeals must be based on scientific or technical data, specifically that incorrect methodologies were used, the data was skewed in some manner, or there was a physical change in the floodplain. FEMA would have no justification for changing a flood hazard determination without sufficient evidence that the change is appropriate.

Fruth explained the six challenges submitted by Waukesha County, two of which were rejected:

- Golden Lake area based on a lack of detailed study data. The DNR and FEMA would be willing to consider further changes but a study must be funded
- Village of Big Bend, related to a subdivision plat. An error was found in the elevation tagged on the map itself but it was not an error in the actual floodplain elevation

Fruth reviewed the four revisions found to be warranted: Brandy Brook, Town of Waukesha property west of the Vernon Marsh, South branch of Sussex Creek at STH 164, and the Bark River and Upper Nemahbin Lake area.

Ruf asked for an explanation of the difference between a floodway and floodplain. Fruth explained that floodway areas are subject to some velocity in flow of water; structures within the floodway have the potential to be swept away by rushing waters. Residents are not allowed to rebuild or remodel in the floodway, unless allowed by a variance. Floodplain areas generally are water storage areas and not rapids of moving water. Residents in a floodplain must flood-proof the structure, rebuilding or remodeling only in the same footprint.

Fruth continued to discuss the new floodway/floodplain determinations in the area of Venice Beach Road and Upper Nemahbin Lake. Beres stated her house was built 1938, and has never had any water problems until the City of Delafield opened their dam. She explained that the DNR also pulled out boards from the Roller Mill, which made the flooding worse. Ruf stated he understands the frustration of the residents present, but advised that this Committee does not have jurisdiction over those issues. Barrows explained why the area is so susceptible to being floodway; these maps were created long before the recent flooding events. She explained that Venice Beach Road is the path of the natural riverbed of the Bark River. Fruth further discussed the notable one-foot elevation level difference between Upper and Lower Nemahbin, as shown on the map. He reviewed the maps provided in response to the appeal submitted by the Town and the County.

Barrows explained the proposed changes were submitted to the DNR for review to make sure they are compliant with the NFIP standards and with the DNR's model ordinance. She stated that once their comments are received and the changes are finalized, a public hearing would be held. Barrows outlined the timeline for the adopting the updated floodplain maps and code amendments before the November 19, 2008 deadline.

- Public Hearing – September 24, 2008
- Park and Planning Commission – October 2

- Ordinance submittal to the County Board – October 8
- LUPE review and recommendation – October 21
- County Board review and decision – October 28

Fruth added that it is hoped that the LUPE Committee members would attend the Public Hearing on September 24.

Approve Minutes of July 15, 2008

MOTION: Jeskewitz moved, second by Yerke, to approve the minutes of July 15, 2008.

Motion carried: 5-0

Correspondence

- Email from Dale Shaver regarding Floodplain Amendments
- Copy of PowerPoint presentation: Waukesha County Recycling System and Capacity Study (RRT & GBB – 2007)

Executive Committee Report

Ruf summarized the items discussed at the Executive Committee meeting

- Closed session
- Ordinances
- Capital Project Six-Month Status Report
- Reviewed monthly calendar
- Appointments

Future Agenda Items

- Ruf stated he will invite Supervisor Haukohl to attend an October LUPE Committee meeting to discuss and clarify budget issues in relation to the Committee's budget reviews.

Future Meeting Dates

- September 16, 2008(Capital Projects): Ruf will not be present.

MOTION: In the absence of any objections, Ruf adjourned the meeting at 11:02 a.m.

Respectfully submitted,

Jim Jeskewitz
Secretary